

FILED
 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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Magistrate Docket No. 08 MJ 0169
 U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Francisco ESPARZA-Gutierrez,

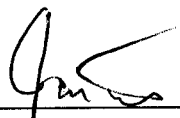
Defendant

COMPLAINT FOR VIOLATION OF:Title 8, U.S.C., Section 1326
 Deported Alien Found in the
 United States

The undersigned complainant, being duly sworn, states:

On or about **January 20, 2008**, within the Southern District of California, defendant, **Francisco ESPARZA-Gutierrez**, an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8 United States Code, Section 1326.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.


 SIGNATURE OF COMPLAINANT
 James Trombley
 Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 22nd DAY OF January 2008


 Jan M. Adler
 UNITED STATES MAGISTRATE JUDGE

CONTINUATION OF COMPLAINT:
Francisco ESPARZA-Gutierrez

PROBABLE CAUSE STATEMENT

On January 20, 2008, at approximately 9:00 PM, Border Patrol Agent W. Sommers was performing line watch duties, in the Campo, California area of responsibility. Agent Sommers was working in an area located approximately ten miles east of the Tecate, California Port of Entry and approximately one mile north of the U.S./Mexico International Boundary. Agent Sommers found footprints leading into the brush. Agent Sommers followed the footprints and encountered four individuals attempting to conceal themselves. One of these individuals was later identified as defendant **Francisco ESPARZA-Gutierrez**. Agent Sommers identified himself as a United States Border Patrol Agent and questioned the subjects as to their immigration status. All subjects including ESPARZA admitted to being citizens of Mexico illegally present in the United States. All four were arrested and transported to the Campo Border Patrol Station for processing.

Routine record checks of the defendant revealed a criminal and immigration history. The defendant's record was determined by a comparison of his criminal record and the defendant's current fingerprint card. Official immigration records of the Department of Homeland Security revealed the defendant was previously deported to **Mexico** on **August 20, 2007** through **Calexico, California**. These same records show that the defendant has not applied for permission from the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, to return to the United States after being removed.

ESPARZA was advised of his Miranda Rights. ESPARZA stated that he understood his rights and stated that he was willing to answer questions without a lawyer present. ESPARZA stated that he is a citizen and national of Mexico who entered the United States. He stated that he is not in possession of the proper documentation to be in or remain legally. He further stated that he knowingly crossed the border illegally by climbing over the international boundary fence.